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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION
AND PROTECTION OF MINORITIES

Forty-third session

SUMMARY RECORD OF THE 21st MEETING
(SECOND PART*)

Held at the Palais des Nations, Geneva,
on Thursday, 20 August 1991, at 3 p.m.

Chairman: Mr. JOINET

later: Mr. HELLER

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* The summary record of the first part of the meeting appears as document E/CN.4/Sub.2/1991/SR.21.

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HUMAN RIGHTS AND DISABILITY (agenda item 12) (continued) (E/CN.4/Sub.2/1991/31)

1. Mr. EIDE expressed appreciation to the non-governmental organizations for their efforts to provide information to the Special Rapporteur and to the many Governments that had replied to his requests for information. Difficult though that might have been for them, they had thus participated in an international partnership which represented a genuine and specific implementation of the Charter of the United Nations, particularly Articles 55 and 56.

2. In his excellent report (E/CN.4/Sub.2/1991/31), Mr. Despouy highlighted a number of tragic phenomena connected with the situation of disabled people throughout the world, and his study thus made an important contribution to education and information in that field. As was shown in paragraph 174 of the report, the Sub-Commission's task in that regard formed part of the prevention of human rights violations in general, and specifically torture, ill-treatment, cruelty to women and children and punishment and other treatment leading to disablement. If the Sub-Commission succeeded in putting an end to some of those violations of human rights it would also help to eliminate the causes of disability, at least in part. The other tasks it had to tackle were more specific, since they were concerned with the removal of prejudice, which depended on education and information, and with ensuring the protection of the disabled against any form of discrimination.

3. With respect to the Special Rapporteur's recommendations and proposals, he endorsed the general recommendation that there should be more participation by the organizations of disabled persons in the formulation of policies to defend their interests. As to specific proposals, the idea of entrusting supervisory functions to the Committee on Economic, Social and Cultural Rights was extremely useful and the Sub-Commission should give it further consideration. He noted with interest that Mr. Despouy had first outlined, in paragraphs 279-283 of his report, the solution recommended by the non-governmental organizations concerned, namely the establishment of an international body or mechanism to monitor respect for the rights of disabled people, before putting forward his own views. He should be commended for having done so, since the method was an exemplary one that might be applied in other situations.

4. Lastly, he sincerely thanked the Special Rapporteur and suggested that his study should be issued in all official languages of the United Nations and circulated widely.

5. Mr. ILKAHANAF expressed his sincere appreciation to Mr. Despouy who, through his competence and deep commitment to the cause of human rights, had been able to fulfil the difficult task entrusted to him. The idea expressed in paragraph 6 of his report - that persons with disabilities were human beings, as human as, and usually even more human than, the rest - had been amply demonstrated by all the handicapped persons who had taken the floor before the Sub-Commission. He fully endorsed all the recommendations and proposals put forward by Mr. Despouy in his report.

6. Mr. DONALD (Disabled Peoples' International) said that Mr. Despouy's final report on human rights and disability (E/CN.4/Sub.2/1991/31) was remarkable for several reasons and reflected the professional and personal commitment of its author. Disabled Peoples' International welcomed the extremely favourable reception given to it by the Sub-Commission and urged that body to consider it as a significant milestone on the way to eventual recognition of the rights of the disabled, who constituted the world's largest minority. During the nine years of work which the formulation of the study had entailed, the vast scope of the problems posed by the relationship between human rights and disability had become apparent, and now that the report had been completed, the Sub-Commission must press forward with its consideration of the question. It must be noted that the report would not have appeared without the direct and constant involvement of disabled individuals themselves, as emphasized by Mr. Despouy himself in the report.

7. Disabled Peoples' International had prepared a written commentary on the report which it would submit to the Centre for Human Rights, but it wished to point out that disabled people, who represented more than 10 per cent of the world's population, welcomed the progress achieved in the recognition of their rights and sincerely hoped that the study would open the way to firm and determined action on their behalf.

8. With the Chairman's permission, he would give the floor to another representative of the same organization, who would speak on more specific points.

9. Mr. JIMENEZ (Disabled Peoples' International) recalled that, as rightly stated by the Special Rapporteur in paragraphs 191 and 192 of his report, dealing with legal barriers, the law could be an instrument of violation of human rights or of discrimination. Some measures thus had the effect of rendering the disabled legally incapacitated and excluding them from many acts of civil life. There were many discriminatory provisions of that nature in - among others - the civil codes of Venezuela and Uruguay and the electoral code of Costa Rica. With a few rare exceptions, such as the United States, where there was a law prohibiting discrimination based on disability, the problems of disabled persons in most countries were not taken into consideration and nothing was done to eliminate the discrimination against them. In some countries, the law even provided for punishment that led to disability, such as amputation or loss of sight - acts that no religious custom or cultural factor could justify. Any discriminatory legislation was a further obstacle to the effective exercise of the fundamental rights that should be guaranteed to all human beings.

10. Disabled Peoples' International therefore trusted in the efficacy of an international ombudsman who would be expressly responsible for monitoring respect for the rights of the disabled. It was also essential to ensure that broad circulation was given to Mr. Despouy's report, which brought hope to all the world's disabled people whose existence had long been overlooked.

11. Mr. TOTSUKA (International Educational Development, Inc.) said he was confident that Mr. Despouy's final report on human rights and disability (E/CN.4/Sub.2/1991/31), which was a unique study of its kind, would do much to promote the idea that disabled people also had rights and that they should be able to exercise them in the same way as others, and recognized all the efforts made by disabled persons themselves to attain that objective.

12. International Educational Development (IED) was particularly interested in the analysis of the relationship between human rights and disabled people on the one hand and humanitarian law on the other, made in paragraphs 119-129 of the report, taking account of activities on behalf of war disabled persons, particularly in El Salvador, which it had itself undertaken. It also took note of the links established between disability and the situation of refugees in paragraphs 146-152 and stressed the efforts of the Office of the United Nations High Commissioner for Refugees to support rehabilitation programmes for disabled refugees and find countries willing to receive them. In that connection, IED commended the Cuban Government which had declared its willingness to accept hundreds of disabled refugees from Central America as well as a substantial number of persons injured by the nuclear disaster at Chernobyl. It also noted with satisfaction that, in chapter I and paragraph 262 of his report, the Special Rapporteur had stressed that the rights of disabled persons were covered in a variety of international human rights instruments and that the lack of an international treaty on the subject did not mean that no international standard existed to provide for the protection of disabled persons. IED shared the Special Rapporteur's view that it was essential above all to enforce existing rules through the various existing international mechanisms and to ensure that provisions for the protection of the rights of disabled persons were incorporated in national legislation. IED also endorsed the specific recommendations for the appointment of an international ombudsman to monitor respect for the rights of disabled persons, or for entrusting the supervisory functions in that area to the Committee on Economic, Social and Cultural Rights, on the understanding that the Commission and Sub-Comission would continue to consider the question of human rights and disability.

13. In that connection, IED wished to draw the Sub-Commission's attention to the situation of disabled persons in China. In Gansu Province, an Act of 1988 provided for the sterilization of mentally retarded people on the pretext - in the words of the Chinese Prime Minister - that such persons "give birth to idiots". More than 5,000 mentally retarded people had thus been subjected to forced sterilization. Other provinces had adopted similar laws and a national law of the same kind was being prepared. It had never been proved, however, that mental disability was hereditary, and specialists were agreed in recognizing that in China, as elsewhere, in most cases the lack of pre-natal care, poor diet, alcoholism or the exposure of pregnant women to dangerous substances were the main causes of mental retardation. The measure in question was thus discriminatory, particularly since it was based on the idea that the mentally disabled were less than human and did not have the same right to life as others, and was a clear violation of the most fundamental human rights.

14. Mr. TIAN JIN, speaking on a point of order, pointed out that the non-governmental organizations should restrict themselves to commenting on Mr. Despouy's report and refrain from attacking particular countries. He requested the Chairman to ensure that they did so.

15. The CHAIRMAN requested the representative of International Educational Development, in concluding his statement, to avoid any digression from the subject under discussion.

16. Mr. TOTSUKA (International Educational Development), continuing his statement, said that the Special Rapporteur himself, in paragraphs 174-178 of his report, had referred to enforced sterilization among the abusive practices used against disabled people. IED welcomed the fact that involuntary sterilization was expressly prohibited in the final version of the draft body of principles for the protection of mentally ill persons, but it continued to consider that the international community should be particularly vigilant in that regard. Lastly, International Educational Development urged the Sub-Commission to request the Commission on Human Rights to circulate Mr. Despouy's report as a United Nations publication.

17. MR. MENDOZA (Observer for El Salvador) noted that, in his report (E/CN.4/Sub.2/1991/31), Mr. Despouy dealt with all problems related to the rights of disabled persons from a humanist standpoint. He recalled, firstly, that disabled people had the same rights as others in general but that they also had special rights which were set forth, but unfortunately in a diffused manner, in various international instruments. Those special rights were not only rights in themselves but were also a means of guaranteeing for disabled people, in conditions of equality, the enjoyment of other fundamental rights. Lastly, the Special Rapporteur had stressed the complementarity that existed between those rights and other requirements to enable the persons concerned to exercise all the rights recognized to them. Mr. Despouy's humanism was evident in the terms he had chosen in all languages to describe disabled people. The Spanish expression "personas con discapacidad" was preferable to the term "impedidos" since it was more comprehensive and had no pejorative connotation like the word "minus válido" used in El Salvador or the word "inválido" which, as Mr. Despouy had indicated, meant "without value". He also proposed a far more acceptable definition of a disabled person since it encompassed the idea of enjoyment of human rights.

18. Among the many causes of disablement, the Special Rapporteur referred to armed conflict or civil war, situations with which El Salvador was unfortunately only too familiar. It was to be hoped that the efforts of the Secretary-General of the United Nations and his personal representative would make it possible to find a political situation to the conflict in that country, where the cessation of hostilities would be one of the best means of reducing the number of disabled people, particularly those physically disabled.

19. His delegation supported Mr. Despouy's recommendations. On the question of monitoring of the implementation of the various international standards on the rights of disabled persons, the appointment of an international ombudsman appeared to be the ideal solution. Mr. Despouy's solution of entrusting the supervisory function to the Committee on Economic, Social and Cultural Rights also had its merits, however. It was nevertheless important to work for the

formulation of a convention on the rights of the disabled. With respect to the chapter on public information and education, it should be noted that the Special Rapporteur had stressed the need for giving more importance to the contribution of disabled people to society in all fields. Lastly, he urged the Sub-Commission to keep the question of human rights and disability on its agenda. The topic might also be placed on the agenda of the 1993 World Conference on Human Rights since that would make it possible to evaluate the results of the World Programme of Action concerning Disabled Persons undertaken as part of the United Nations Decade for Disabled Persons, which was to end in 1992.

20. Mr. COOK (Observer for the United States of America) recalled that the United States Government had been one of the leaders of the movement for the promotion of the rights of disabled persons, as witnessed by the adoption of the American Disability Act in 1990. He congratulated Mr. Despouy on his outstanding work and assured him that his Government would study his report carefully.

21. Mrs. RUESTA de FURTER (Observer for Venezuela) congratulated Mr. Despouy on his thorough analysis of the question of human rights and disability. The Special Rapporteur rightly emphasized in his report that the Charter of the United Nations itself recognized to disabled persons not only the full civil, political, economic, social and cultural rights enshrined in international instruments but also the right to exercise them in conditions of equality with others. He also drew attention to the indivisible and interdependent nature of fundamental human rights and freedoms and the consequent need to give the same attention and consideration to the implementation, promotion and protection both of civil and political rights and of economic, social and cultural rights, and he had done so in his report.

22. With respect to the causes of disablement, and particularly the general causes which did not necessarily involve any violation of human rights, her delegation wondered whether the persistence of certain diseases in certain countries, such as those referred to in paragraphs 116 and 117 of the report, might not result from a violation of economic, social and cultural rights. The same question might also be raised with respect to the insufficient care of and cruelty towards children and women dealt with in paragraphs 130-145 of the report. The problem of detained children in South Africa, which was referred to in paragraph 131, brought to mind a further problem that might exist in developed countries - that of juveniles who had not only been deprived of their freedom for having infringed the law but who were also handicapped, bearing in mind that those juveniles were entitled to exercise their rights in the same conditions as other juveniles and that the prison establishment was therefore required to provide them with the means of doing so.

23. She shared the view expressed by the Special Rapporteur in paragraph 202 of the report that public information and education campaigns in general to eliminate prejudice towards disabled persons were of vital importance. There could be no doubt that the publication of the report would contribute to the realization of that objective. One disturbing question that remained, however, was that of the low degree of active involvement of disabled persons

in rehabilitation programmes - as pointed out by WHO and in paragraph 209 of the report - and the evasive attitude of some States towards their obligations in that regard referred to in paragraph 205. Lastly, she commended and thanked Mr. Despouy for his excellent report, which her Government would study carefully. The statement made to the Sub-Commission by Disabled Peoples' International would also be sent to her Government as an annex to Mr. Despouy's report.

24. Mr. DESPOUY said that he had listened with great attention and interest to all the comments made on his report by his colleagues in the Sub-Commission. In particular, he thanked Mr. Tian Jin who had emphasized the importance of the role of national committees in promoting the rights of disabled persons, and Mr. Flinterman, who had stressed the fact that disabled persons were experts on questions of invalidity. Replying to Mr. Flinterman's question concerning the timeliness of preparing a convention on the rights of disabled persons, he said that when it had been raised in the General Assembly, the idea of such a convention, called for by disabled peoples' organizations and certain governments such as Sweden, had not been adopted for the simple reason that two other instruments - the International Convention on the Protection of the Rights of All Migrant Workers and Their Families and the Convention on the Rights of the Child - had at that time been under preparation and to have prepared a third instrument of the kind would have created a work overload. That did not mean that it had been ruled out once and for all. It should nevertheless be borne in mind that there were already a considerable number of international standards that could be applied to the situation of disabled persons and the implementation of which now needed to be monitored.

25. As Mrs. Ksentini had suggested, it would indeed be useful to establish a link between, on the one hand, the implementation of the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, and, on the other, the prevention of disability; and thus for the Sub-Commission to cooperate with the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women. He also thanked Mrs. Bautista for stressing the need to recognize the right of disabled persons to play a role in society, and for proposing that the Sub-Commission should continue its consideration of the question of the rights of disabled persons at its subsequent sessions. He appreciated Mrs. Daes' encouragement all the more in that she knew by experience what an in-depth study of a question entailed, since she had herself been concerned in formulating a draft body of principles for the protection of persons suffering from mental illness. He thanked her for emphasizing the fact that disabled persons should enjoy positive discrimination and for drawing attention to the twofold discrimination suffered by indigenous peoples. He had taken due note of her support for all the general and specific recommendations he had made in paragraphs 271-284 of his report and of her proposal that the report should be issued in all official languages of the United Nations and given wide circulation. As Mr. Eide had observed, the report could not have appeared without the valuable cooperation of all Governments that had sent him information, and it was important to bear that in mind. He thanked him for drawing attention in particular to the question of punishment and other

treatment that could induce physical disability and for describing the method of presenting the views of non-governmental organizations in advance of his own - in the recommendations at the end of the report - as exemplary.

26. With regard to the comments made by observers of certain States, he noted the appeal made by the observer for El Salvador for the cessation of hostilities in that country, where the civil war had caused an increase in the number of disabled persons. He also noted the observer's proposal that the question of the rights of disabled persons should be placed on the agenda of the World Conference on Human Rights to be held in 1993. He expressed his regret to the observer for the United States that the Disabled Persons Act adopted by the United States in 1990 had not been expressly mentioned in the report; he would remedy that omission if he was able. He was also grateful to the observer for Venezuela for pointing out that consideration of the question of disability had brought out yet more clearly the indivisible and interdependent nature of all human rights of whatever nature. He took due note of the concern she had expressed about the treatment of women and children and the special situation of disabled juveniles deprived of their freedom, as well as her comments on public information.

27. With respect to the non-governmental organizations, he had often had occasion to meet their representatives while preparing his report. He wished to draw attention to two issues that had not been touched upon in the report: that of making other forms of translation available to disabled persons so that they could have access to the discussions and documents of United Nations organs; and that of the difficulties created for blind people with guide dogs by the quarantine regulations in many countries. As Disabled Peoples' International had pointed out, disabled people represented the largest minority in the world and everything possible should therefore be done to help them to overcome all the obstacles, particularly the legal obstacles, against their full integration into society. Governments should give thought to the fact that it was not enough to recognize the rights of disabled persons; they must also be given the means of exercising them. Disabled Peoples' International had also rightly emphasized that a particular law, such as the laws providing for amputation as a penalty for certain offences, might well be the cause of a violation of human rights. International Educational Development (IED) had drawn attention to the situation of disabled refugees. He associated himself with the appeal to all Governments to follow the example of Cuba, to which reference had been made, or of the Netherlands or Switzerland, and admit more disabled refugees.

28. Reverting to the question of the monitoring of all the scattered international standards on the protection of disabled persons, he said that ideally such monitoring should be carried out by a single specific body but, failing that, there was an immediate choice between two alternatives: the one envisaged by the non-governmental organizations of establishing an international ombudsman who could advise Governments or enter into a dialogue with them and the one for expanding the mandate of the Committee on Economic, Social and Cultural Rights to enable it to carry out that monitoring function in a special session. The Committee appeared to be generally in favour of that idea, but it was for the Economic and Social Council and the senior organs of the United Nations to take a decision.

29. Lastly, his work basically had consisted of presenting the topic of disability not so much from the strictly humanitarian or moral standpoint as from its legal standpoint. The treatment of disabled persons should conform to certain legal concepts. That was the line of thinking that had led to the final report he had submitted to the Sub-Commission and whose purpose was to make all countries aware of the need to adopt specific measures in their national systems on behalf of disabled persons. He sincerely thanked all the organizations and Governments that had cooperated with him, as well as Mr. Martensen and all the United Nations Secretariat, without whom he would have been unable to fulfil his task - a wonderful experience that had taught him a great deal. He sincerely hoped that, as a result of the report, the question of the rights of disabled persons would at last be dealt with as an essentially legal question.

30. Mr. Joinet resumed the Chair.

31. The CHAIRMAN welcomed the spirit of cooperation shown by all participants in the discussion on a relatively new topic. He said that the Sub-Commission had concluded its consideration of agenda item 12.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

Draft resolutions relating to agenda items 5 (a) and 5 (b)
(E/CN.4/Sub.2/1991/L.3 and L.7)

32. The CHAIRMAN recalled that, by its decision 1990/122, adopted without a vote, the Sub-Commission had decided that draft resolutions and decisions should not be introduced by one of the sponsors and had urged members not to make general comments on the drafts but to offer only concrete proposals on the texts. He intended to enforce that decision.

Draft resolution E/CN.4/Sub.2/1991/L.3

33. The CHAIRMAN announced that Mr. Al-Khasawneh had become a sponsor of the draft resolution.

34. Mrs. WARZAZI proposed that, since 23 of the 26 members of the Sub-Commission were co-sponsors, the draft resolution should be adopted by consensus.

35. Draft resolution E/CN.4/Sub.2/1991/L.3 was adopted by consensus.

36. Mr. KEILAU (Centre for Human Rights) said that the administrative and financial implications on the programme-budget of draft resolution E/CN.4/Sub.2/1991/L.3 would be published in document E/CN.4/Sub.2/1991/L.8. Pursuant to the requests made in the draft resolution, it was anticipated that the Special Rapporteur would visit South Africa for five working days, accompanied by an official from the Centre for Human Rights, and that he would spend five working days in New York and also five working days in Geneva for consultations with the Centre for Human Rights. Provision was also made for the services of two economist consultants (four months' work) to help him make his analysis. The costs, to be financed under Chapter 28 (Human Rights) of the draft programme-budget, were estimated at $39,600 for 1991-1992.

Draft resolution E/CN.4/Sub.2/1991/L.7

37. Mrs. KSENTINI said that the year 1988 indicated in the second preambular paragraph should be replaced by 1989. In operative paragraph 6, the words "one day" should be deleted, since the joint meeting had not lasted for a full day. In addition to those two corrections, the sponsors had decided, after consultation, to make further amendments to the draft resolution, the revised version of which would be issued under the symbol E/CN.4/Sub.2/1991/L.7/Rev.1. It was proposed, inter alia, that two new paragraphs should be added after the fourth preambular paragraph, to read:

> "Concerned that despite these efforts, racism and acts of violence resulting therefrom persist and are even increasing in a number of countries in North America and Europe,
>
> Concerned also that in many parts of the world ethnic, cultural, linguistic, religious and other minorities are suffering from discrimination and discriminatory treatment."

38. It was further proposed that a new paragraph should be added after operative paragraph 4, to read:

> "Welcomes the efforts of the Committee on the Elimination of Racial Discrimination to fulfil its mandate;"

and that a new paragraph should also be added after the original paragraph 7, to read:

> "Urges all Governments to undertake immediate measures and to develop strong policies effectively to combat racism and eliminate discrimination;"

39. Lastly, two new paragraphs were to be inserted at the end of the draft resolution, following the existing paragraph 9, to read:

> "Requests the Secretary-General to submit to the Sub-Commission at its forty-fourth session, a report on serious incidents attributable to racism, racial discrimination and xenophobia which may take place in any part of the world, including the measures taken by the Governments concerned in response to these incidents;
>
> Expresses its deep conviction that a special rapporteur of the Sub-Commission should be appointed to update the study on racial discrimination prepared in 1976 by Mr. Hernán Santa Cruz, in the light of recent new trends of racism, racial discrimination and xenophobia in many countries of the world."

40. Mr. SACHAR requested that his name should be added to the list of sponsors of the draft resolution. He proposed that the words "in all parts of the world", in the penultimate paragraph of the draft resolution which Mrs. Ksentini had just read out, should be replaced by the words "in any part of the world".

41. Mrs. KSENTINI accepted that proposal. She expressed the hope that the draft resolution, which was based on resolutions 1990/1 and 1990/2, adopted without a vote by the Sub-Commission at its forty-second session, would also be adopted, as amended, without a vote.

42. The CHAIRMAN announced that Mr. Rivas Posada had become a sponsor of the draft resolution.

43. Draft resolution E/CN.4/Sub.2/1991/L.7, as amended, was adopted without a vote.

Draft resolutions relating to agenda item 13

Draft resolution E/CN.4/Sub.2/1991/L.4

44. The CHAIRMAN announced that Mr. Guissé and Mr. Türk had joined the original 20 sponsors of the draft resolution.

45. Mr. FLINTERMAN said that the draft resolution was virtually identical to one on the same subject which the Sub-Commission had adopted without a vote two years earlier. Since 20 experts of the Sub-Commission had sponsored it, he hoped that the draft resolution would also be adopted without a vote.

46. Draft resolution E/CN.4/Sub.2/1991/L.4 was adopted without a vote.

The meeting was suspended at 7.40 p.m. and resumed at 8.20 p.m.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES (agenda item 10) (continued)

(a) QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES

(d) THE RIGHT TO A FAIR TRIAL

(E/CN.4/Sub.2/1991/19 and Add.1; E/CN.4/Sub.2/1991/20, 21, 22, 24, 25, 26, 28, 29, 50 and 53; E/CN.4/Sub.2/1991/NGO/18 and 19; E/CN.4/Sub.2/1991/18; E/CN.4/Sub.2/1990/10, 30 and 32; A/CONF.144/28; A/CONF.144/INF.2)

47. Mr. KEILAU (Centre for Human Rights), introducing agenda item 10 recalled, with regard to sub-item (a) (Question of the human rights of persons subjected to any form of detention or imprisonment) that the Sub-Commission had considered the question every year since 1974, taking into account information from Governments, specialized agencies and non-governmental organizations and that, by resolution 1987/33, the Commission on Human Rights had requested the Secretary-General to continue to make available to the Sub-Commission succinct information on the work of other bodies in that field. At the current session, the Sub-Commission therefore had before it

two reports by the Secretary-General, one containing the information transmitted by Governments (E/CN.4/Sub.2/1991/19, available in Spanish and E/CN.4/Sub.2/1991/19/Add.1, available in English) and the other containing information transmitted by the specialized agencies and intergovernmental organizations (E/CN.4/Sub.2/1991/20, available in the six official languages of the United Nations). It also had before it a synopsis of the information submitted by non-governmental organizations (E/CN.4/Sub.2/1991/21, available in the six official languages of the United Nations), a report by the Secretary-General giving succinct information on the work of other bodies on the subject (E/CN.4/Sub.2/1991/22, also available in the six official languages of the United Nations) and the report of its sessional Working Group on Detention (E/CN.4/Sub.2/1991/27), which would be published subsequently.

48. Also under agenda item 10 (a), the Sub-Commission would consider the question of model legislation on the basis of a note by the Secretary-General containing the consolidated list of United Nations standards in the field of human rights in the administration of justice and the comments received regarding model legislation (E/CN.4/Sub.2/1991/26, available in all languages except Chinese), prepared pursuant to General Assembly resolution 45/166 and Commission on Human Rights resolution 1991/34. Concerned by the question of the detention, disappearance, and death in detention of United Nations staff members from the point of view of respect for their human rights as laid down in international instruments, the Sub-Commission, in resolution 1988/9, had entrusted Mrs. Bautista with the task of undertaking an examination of the violations of the human rights of staff members of the United Nations system, their families and experts, as well as of the repercussions of those violations on the functioning of United Nations organs and agencies. The final version of that report was published in document E/CN.4/Sub.2/1991/23. Further, pursuant to resolution 1989/31, the Sub-Commission also had before it another report by Mrs. Bautista (E/CN.4/Sub.2/1991/24, available in all languages except Chinese) on the application of international standards concerning the human rights of detained juveniles as well as a note by the Special Rapporteur containing the comments made by the non-governmental organization Defence for Children International on that question published in document E/CN.4/Sub.2/1991/50 and available in English, Spanish and Russian. With regard to the question of administrative detention, the Sub-Commission would have before it a note by the Secretary-General (E/CN.4/Sub.2/1991/25) informing it of the decision taken by the Commission on Human Rights on the report on the question prepared by Mr. Joinet (E/CN.4/Sub.2/1990/29 and Add.1) pursuant to its resolution 1990/22. He recalled, with regard to the question of the privatization of prisons, that by its decision 1989/110, the Sub-Commission had requested Mr. Alfonso Martínez to submit to it, at its forty-second session, a working paper and that the Working Group on Detention, established at that session had decided to postpone consideration of that topic until 1991 (E/CN.4/Sub.2/1990/32, para. 32). Finally, the attention of the Sub-Commission was also drawn to the report of the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders held in Havana in September 1990 and published as document A/CONF.144/28.

49. Under item 10 (b) (Question of human rights and states of emergency), the Sub-Commission would have before it the latest annual report on compliance with the rules, internal and international, guaranteeing the legality of the introduction of a state of emergency and the list of States which had

proclaimed, extended or terminated a state of emergency (E/CN.4/Sub.2/1991/28, available in English, Spanish, French and Russian) prepared by the Special Rapporteur, Mr. Despouy, whom it had appointed to carry out that task in its resolution 1985/92. Finally, under item 10 (c), the Sub-Commission would be required to review the question of the individualization of prosecution and penalties, and repercussions of violations of human rights on families and, under item 10 (d), it would have before it the preliminary report on the right to a fair trial prepared by Mr. Chernichenko and Mr. Treat pursuant to resolution 1990/18 (E/CN.4/Sub.2/1991/29, available in English, Arabic, Spanish and Russian).

50. Mrs. KIRCHER (Amnesty International) said that despite welcome developments in the human rights situation in various regions of the world over the last decade, serious human rights violations, such as arbitrary arrest and detention, disappearances, torture and extrajudicial executions were still occurring in many countries. Amnesty International believed that the phenomenon of impunity, literally exemption from punishment, was one of the main contributing factors to the continuing patterns of violations and it believed that the Sub-Commission should therefore consider that question in greater depth under agenda item 10.

51. Under the international human rights instruments ratified by them, States were required to undertake investigations into human rights violations and to ensure that those responsible were brought to justice. However, all too often, Governments failed to discharge any such obligation. That was particularly evident in countries where those responsible for violations were paramilitary groups or "death squads" that sometimes operated openly with official consent and went unpunished. Such was the case, for example, in the Philippines and in Colombia. Further, even when investigations were carried out and judicial proceedings were brought against the perpetrators, the institutions responsible for the administration of justice were often weak or inefficient or susceptible to pressure from other authorities or from the perpetrators. The fact that those cases were often brought before special tribunals, generally military tribunals, which were disinclined to prosecute fellow officers or which only handed down light sentences on the rare occasions when the perpetrators were found guilty also contributed to subverting the process of justice. Often the victims of violations were discouraged from availing themselves of certain domestic remedies such as habeas corpus for fear of reprisals. In Sri Lanka, for example, families which had made inquiries received death threats and lawyers and witnesses who had testified before the courts had been killed. Finally, the amnesty laws, which Governments sought to justify by invoking the need for national reconciliation or the preservation of the security of the nation, but which were often adopted as a result of pressure from those previously in power perpetuated the phenomenon of impunity.

52. Amnesty International believed that in order to break the cycle of violence and human rights violations, it was essential for all Governments, including successor Governments, to ensure that investigations into allegations of human rights violations, the results of which should be made public, were undertaken by impartial and independent institutions with the necessary authority and resources for their task. It was also important for those responsible for human rights violations, whoever they were, to be

brought to trial and given sentences in line with the seriousness of the offences committed, it being understood that such trials would be conducted in full conformity with internationally recognized standards and that the defendant would not be subjected to torture or to the death penalty. Moreover, amnesty laws should not be acceptable, whether adopted by those responsible for violations or by the successors, since they had the effect of preventing the emergence of the truth and subsequent accountability before the law.

53. Amnesty International welcomed the attention given by the Working Group on Enforced or Involuntary Disappearances to the problem of impunity, but urged other United Nations human rights bodies not to ignore that phenomenon which underlay serious situations of human rights violations throughout the world. The Sub-Commission could play a useful role in the international debate on that issue, first, by ensuring that the causes and effects of impunity were fully taken into account by special rapporteurs in all existing and future studies, for example, in the study on states of emergency and in the study on the independence of the judiciary, and second, by further examination of some of the factors which gave rise to impunity, such as the use of special tribunals. Specific studies might be undertaken of issues such as those and the ways in which the negative effects of impunity could be overcome more effectively.

54. Mr. ARTUCIO (International Commission of Jurists) stressed the need to put an end to the phenomenon of impunity which was an offence to justice and was the immediate cause of the persistence of human rights violations throughout the world. Measures of clemency such as amnesty or pardon were accepted in the international law insofar as they did not involve relinquishing the possibility of investigating and trying. That was what emerged from the international human rights instruments which made it incumbent upon States which had ratified them or acceded to them to secure respect for the rights of all persons and the dignity of human persons. In the countries where they had been incorporated into domestic law, those international standards had a value equal or greater than that of national legislation; that meant a State could not take measures that contravened the obligations it had accepted by ratifying a particular instrument, for example, grant an amnesty to perpetrators of acts of torture, summary execution or enforced disappearance, merely by promulgating a law or a decree. It would have to denounce the instrument in question and wait until such denunciation had taken effect. That was the case for States which had ratified the International Covenant on Civil and Political Rights and the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and, at the regional level, the American Convention on Human Rights or which had acceded to them and could not escape the obligations incurred under those instruments simply by promulgating a law or a decree since such an act would constitute a violation of international law. It was interesting, as Mr. van Boven noted in his report on the compensation of victims of serious human rights violations (E/CN.4/Sub.2/1991/7), that the Committee against Torture had found in one particular case that the law on the duty of obedience and the so-called Punto final law which had been adopted in a specific country w e incompatible with the spirit and objectives of the Convention against Torture. Consequently, it was obvious that in cases of human rights violations, the only line of conduct to be followed for the competent

authorities of the country in question was to investigate the facts, try the guilty and ensure that they were sentenced to appropriate penalties and that those penalties were executed. That was why the International Commission of Jurists suggested that the Sub-Commission should appoint one of its members to prepare a working paper on the question of impunity for perpetrators of human rights violations, for consideration at its forty-fourth session.

55. In his annual report on the question of human rights and states of emergency (E/CN.4/Sub.2/1991/28), the Special Rapporteur, Mr. Despouy, emphasized the fact that some of the most serious human rights violations, such as arbitrary detention, torture, political assassinations and summary executions were often linked to the exceptional powers granted to the security forces, the police or the army during a state of emergency. While States were authorized by international law to proclaim a state of emergency in a situation of crisis, they were nevertheless required to ensure that the emergency measures adopted on such an occasion had the least possible negative impact on human rights and fundamental freedoms. That was why the Sub-Commission, in resolution 1990/19, had requested the Special Rapporteur, Mr. Despouy, to prepare draft standard provisions on emergency situations which could serve as a reference for Governments; that would have the twofold advantage of giving rise to reforms and assuring an appropriate internal control of states of emergency. The International Commission of Jurists strongly supported the first draft of principles to be followed for the drafting of legal texts relating to states of emergency, which appeared in annex I of Mr. Despouy's report, and suggested that the Sub-Commission should request him to study in greater depth the question of rights that were intangible even during states of emergency, namely, the right to the remedy of habeas corpus and amparo.

The meeting rose at 9.05 p.m.